IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2120 OF 2002

Ramesh Hiralal Sharma ...Applicant

Versus

The Superintendent of Police,
Central Bureau of Investigation &
Anr. ...Respondents

.....

Mr. Amin Solkar with Ms Misbah Amin Solkar for the Applicant.
Ms G.P. Mulekar, APP for the Respondent -State.
Mr. H.S. Venegaonkar, APP for CBI.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 2nd MARCH, 2016.

P. C. :

This is an application filed under section 482 of the Criminal Procedure Code challenging the impugned order dated 19.4.2002 whereby the learned Special Judge, Greater Bombay, rejected Misc.Application No.64 of 2002 in Special Case No.55 of 1990 for transferring records and proceedings of the said case to the Court of Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai.

2. Heard Mr. Amin Solkar for the Applicant and Mr. H.S. Venegaonkar, APP for the C.B.I.

3. The Respondent No.1 had filed a charge-sheet against the present Applicant and the other co-accused before the Special Judge, Greater Bombay for offences under sections 13(1) (d) and 13(2) of the Prevention of Corruption Act, 1988 and under sections 420, 471, 468, 120-B of the Indian Peanal Code.

4. The original accused No.1- Manipur Upendra Kini, who was the public servant had filed an application for discharge before the Special Judge. The said application was dismissed. The original accused No.1 had challenged the said order in Criminal Revision Application No.131 of 1997. The said revision application was allowed by this Court vide order dated 11.12.2001. The impugned order was set aside and quashed and the original accused No.1, who was the public servant, was discharged from all the offences for which he was prosecuted.

5. In view of the discharge of the accused No.1 for the offences of Prevention of Corruption Act, the Applicant herein-accused No.3 had filed an application before the Special Court for transferring

the record and proceedings to the Additional Chief Metropolitan Magistrate. The Applicant /accused No.3 had sought transfer of the case to the Court of Additional Chief Metropolitan Magistrate, on the ground that the accused No.1 was discharged from the offences including the offences under the prevention of corruption Act and the other accused, who are not public servants are charged only with offences under the provisions of the Indian Penal Code, which are triable by Court of Magistrate. The said application was opposed by the CBI. The learned Special Judge has dismissed the said application mainly on the ground that the jurisdiction to entertain a criminal matter legally acquired by the Special Court established under the Prevention of Corruption Act, thus cannot be divested by subsequent events such as discharge of the public servant. Aggrieved by the said order, the Applicant has invoked the jurisdiction of this under section 482 of the Criminal Procedure Code.

6. Mr. Amin Solkar, the learned counsel for the Applicant has placed reliance on the decision of this Court in **Dr. Surendra s/o. Shankarlal Bajaj & Ors. Vs. State of Maharashtra, 2007 ALL MR (Cri) 475,** wherein the charge-sheet was filed under the provisions of Scheduled Castes and Scheduled Tribes Act as well as the IPC. The

accused in the said case had challenged the registration of offences under the provisions of Scheduled Castes and Scheduled Tribes Act. Said challenge was upheld and the FIR had been quashed to the extent of offence under the Atrocities Act. It was held that once the FIR and the further proceedings therein for the offence punishable under section 3(1) (x) of the Atrocities Act were quashed, the Ad-hoc Additional Sessions Judge had no jurisdiction to frame the charge for the said offence and also could not proceed with the trial of the offence punishable under sections 323, 342 and 506 r/w. 34 of the IPC. It was held that the offences were triable by J.M.F.C. and hence the learned Ad-hoc Additional Sessions Judge should have allowed the application of the Applicants and remanded the matter back to the concerned J.M.F.C.

7. At the outset, it may be mentioned that the Prevention of Corruption Act was enacted and amended from time to time to effectively deal with offences of corruption by public servants. Section 3 of the Act enable the Central Government or the State Government to appoint Special Judges to try the offences punishable under the Act or conspiracy or attempt to commit offence under the P. C. Act or abetment of the offence under the P. C. Act. Section 4 of the P.C. Act,

starts with a non- obstant clause, provides that the offences specified in sub-section (1) of section 3 shall be tried by Special Judges only. Sub section (3) provides that when trying any case, a Special Judge may also by any offence, other than an offence specified in section 3, with which the accused may under the Code of Criminal Procedure, be charged at the same trial.

8. A plain reading of this provision clearly indicates that the special courts are constituted to try offences under the Prevention of Corruption Act and that the offences under the Prevention of Corruption Act are exclusively triable by a Court of Special Judge. While trying the offences under the Act, the Special Judge can also try offence under other Acts.

9. In the instant case it is not in dispute that the charge-sheet was filed before the Special Court against the public servant-accused No.1 and the other accused for offences under the provisions of the Prevention of Corruption Act as well as the provisions of the Indian Penal Code. It is also to be noted that the sole public servant-accused No.1 has been discharged of all the offences including the offence under the Prevention of Corruption Act. The Applicant as well as the other co-accused are not the public servants and in view of discharg of

the public servant (accused No.1) they cannot be tried for offence specified in clause (b) of sec section (1) of section 3 of the Act. The offences alleged to have been committed by the Applicant as well as the other co-accused are triable by the J.M.F.C. Considering the said fact and also considering the principles laid down by this Court in **Dr. Surendra (supra),** the learned Special Judge ought to have allowed the application of the Applicant and returned the charges to be filed before the concerned Magistrate, who is competent to investigate the complaint instituted by the CBI.

10. For the abovesaid reasons the application is allowed. The impugned order is set aside. The learned Special Judge, Greater Bombay, to forward the record and proceedings of Special Case No.55 of 1990 to the Chief Metropolitan Magistrate, Esplanade, Court, Mumbai. The Chief Metropolitan Magistrate shall allot the said case to the Court of the Magistrate, appointed specially for trying the CBI cases.

(ANUJA PRABHUDESSAI, J.)